REBUTTAL TESTIMONY OF MIKE MCCLENAHAN
ON BEHALF OF SAN DIEGO GAS & ELECTRIC COMPANY

BEFORE THE CALIFORNIA ENERGY COMMISSION

INTEGRATED ENERGY POLICY REPORT (DOCKET NO. 04-IEP-01D)

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In my rebuttal testimony, I will focus on several themes that arise in the direct testimony of the California Energy Commission (CEC) witnesses Kennedy, Jaske and Frayer (served on July 8, 2005), and I will address the flaws in those common arguments. I will also point out specific errors that are unique to the testimony of each individual CEC witness.

Confidentiality of 2006-2008 as Mitigation of Harm

All three CEC witnesses make the point that any potential harm caused by the release of this data is mitigated by the fact that the first three years are held as confidential.[1] This reasoning is flawed because it misunderstands the nature of acquiring major capacity additions in California. In particular, due to the long lead times for permitting, acquisition, approval and construction of electric infrastructure (both generation and any required associated transmission), the need to begin the acquisition process for resources to be available in 2009 is already upon the utilities and other load serving entities. In essence, the 2009 market for major capacity additions is trading right now so releasing 2009 data is very much as large a danger (or larger, given the value of

[1] Frayer (p. 19): "The NOI includes adequate controls to prevent market manipulation…the first three years of the forecast time horizon (2006-2008) from the resource plan will not be released"; Jaske (p. 13): "Thus for the period 2009 to 2016, which is the time period in dispute…There are no mandatory purchase requirements that far forward"; Kennedy (p. 3): "Data submitted for years 2006-2008 would not be published…Staff has consistently recognized that the data for near-term years is more sensitive…" and (p. 5) "The potential harm that may come from market manipulation evaporates when additional time is available…"

large, discrete capacity additions as compared to a larger number of smaller spot market transactions) as the release of more recent data (2006-2008).

The Need for the Public Release of the Data at Issue in this Proceeding

All three CEC witnesses make broad, generalized claims that the data at issue here must be released allegedly in order to accomplish a list of goals such as the reduction of the uncertainty for sellers, allowing regulators to conduct necessary planning, and the promotion of investment and greater competition in the market.[2] These claims are not sufficiently supported by evidence from the witnesses, nor by common logic. The assertions along these lines overlook a fundamental and significant point that the IOUs' Requests for Offers (RFO) will inform sellers of *exactly* the resource need that the IOUs seek to fill. In this sense, sellers are given perfect knowledge and do not need to rely on aggregated summary data tables or "sophisticated estimates" made by sellers and their consultants.

The release of an IOU solicitation, with its precise communication of need, should serve to promote vigorous competition. Indeed, this competition makes RFOs a primary means of transacting, as the California Public Utilities Commission (CPUC) has recognized. Sellers need not be concerned with how the IOU arrived at its declared need because the information contained in a utility RFO has been scrutinized by many parties through the CPUC and CEC long-term resource planning/integrated energy policy report

[2] Frayer (pg 26): "The information encapsulated in the aggregated summary tables will provide accurate and necessary signals on the need for new generation investment, further supporting the development of a robust competitive electric industry..."; Jaske (p. 3): "The aggregated summaries, if not the resource plan data themselves, are essential to electricity planning in California"; Kennedy (p. 5): "...failure to make this type of planning information freely available has the potential to perpetuate non-competitive markets."

process, the utility's Procurement Review Group (PRG) and perhaps an Independent Evaluator as well.

It is also important to recall that all non-market participants who request the confidential resource planning data have full access and there should be no further need for sellers to develop their own independent assessment of IOU need. As such, Witness Jaske's claim that this data release is "essential to electricity planning in California" ignores the fact that this data is already available to planners, regulators, and the IOUs' PRGs. In any event, planning has and continues to occur without the widespread public release of this data. In fact, Witness Jaske goes on to refute the "essential" need for data release by stating at p. 3 of his testimony that this issue is actually a "matter of public policy."

The fact that planning and successful procurement of resources can occur without broad public release of this data is further underscored by recent facts. California has recently seen numerous examples of resource planning and additional investment in infrastructure taking place without releasing confidential data as the CEC proposes here: SDG&E's acquisition of ~1200mw of generation at three different power plants and SCE's addition of a major generation resource at Mountainview are two examples. In addition, planning and infrastructure investment continue in transmission as evidenced by the recently completed Miguel-Mission #2 line and the upgrades at Path 15.

Data Availability

The CEC witnesses, while advocating releasing the aggregated data tables at issue in this proceeding, contend that the data is essentially already available in the market.[3] If in fact this information is already available as claimed by all three CEC witnesses, then one is left to wonder (1) why parties to proceedings at the CPUC relentlessly pursue release of this type of data that is supposedly already available to them and (2) whether the economic benefits that the CEC seeks to achieve by releasing confidential data would already be integrated into the market, thus mooting the issue here. Further, if the data to be released by the CEC is merely a "refinement" to existing, publicly available data, then one would question whether this data really is just a "refinement." Perhaps it is the packaging of this data providing the means for sellers to confirm the "inferences that the generator and energy consulting community have already developed"[4] that also has value. Should ratepayers be funding this type of free consulting to their counterparties in the market?

As Witness Jaske even points out on p. 7: "whole firms have sprung into existence just to assemble and distribute" such data. The fact that this data is valuable and requires interpretation and "assembly" argues strongly for its status as protected from broad disclosure and dissemination such as the CEC attempts to do here. In fact, it is not merely data that is confidential, it is the expert knowledge required to "assemble" and

[3] Frayer (p. 2 line 26): "In reality, these aggregated summary tables serve as a refinement of the existing public knowledge base, effectively a replacement (or substitute) for already available information"; Jaske (p. 7): "Those in the industry with detailed knowledge of utility resources make sophisticated estimates about the energy to capacity relationship of the data that have already been revealed.... Thus, the IOU – specific data that the Energy Commission proposes to release is at best a modest improvement..."; Kennedy (p. 4): "The IOUs' claims of economic harm if these summaries are released fail to account for ... the availability of similar data for the IOUs..."

[4] Jaske, p. 7.

interpret that data. Witness Jaske claims that "similar" data has been released by the utilities in other proceedings and filings. First, I am unaware that precisely the data at issue here has been provided publicly. Second, to the extent similar data has been provided to the CPUC, it is subject to a protective order as far as I am aware.

Basic Misunderstanding of the California Market

Throughout the testimony of the CEC witnesses, there are statements that call into question the witnesses' fundamental understanding of the California market.[5] The witnesses fail to realize, for example, that there is at least one centralized market operated by the Intercontinental Exchange (ICE) and there is the equivalent of an "open outcry" trading system available through voice brokers. Both of these markets provide valuable service in allowing willing buyers and sellers to transact in an open, transparent manner. In addition to the price discovery created by these markets, there has been considerable effort in the last two years to increase the quality and quantity of price data reporting by various energy publications.

In addition, Witness Jaske states at p. 8 of his testimony that "The CPUC does not allow the IOUs to purchase more than 5% of capacity needs from the spot market." This assertion is simply not true; the CPUC's guidance is that 5% is a rebuttable target only – least cost dispatch will dictate the actual amount of energy transacted in the spot market. Witness Jaske also states at p. 8 of his testimony that "Thus, the IOUs have a wide range of options for meeting demand, from short-term to long-term contracts. The prices paid under these contracts can be fixed, or they can be cost-based." It is not SDG&E's

[5] Frayer (p. 7 footnote): "I use the term California market" broadly in this testimony. Although I realize that there is currently no centralized day ahead market for electricity…"; Jaske (p. 8): "There is no organized Day-Ahead energy market, but there are a few thinly traded, standardized contract forms that allow for a limited degree of price discovery."

experience that it has access to "cost based" contract options. Further, sellers have not exhibited a willingness to allow us to know what their costs are. In fact, in the CPUC decision that returned the IOUs to procurement (D.02-10-062), the Commission adopted a "Standard of Conduct" that required procurement contracts to contain language that obligated both parties to provide data to the CPUC on request.[6] In SDG&E's first RFO under its new procurement authority, all sellers refused to include this contract language (which would require them to provide data, not publicly, but only to the CPUC) and the Commission was forced to drop this Standard of Conduct.

Witness Frayer states at p. 15: "Moreover, if the buyers' revelation is a substitute for the supplier's pre-existing private information on the value of the product being transacted, then it also motivates competition and reduces bidder' (suppliers') profits to the benefit of buyers…" On the contrary, I believe that where the "value of the product being transacted" is known by the suppliers in advance, responses will tend to cluster around what they believe the expected value to be. This result is counter to competing through submitting a best offer price based upon the economics of a project.

Witness Frayer also states at p. 19: "… the IOUs are well informed about each others' positions and have extensive data on suppliers through the various filings prepared by those suppliers…" Witness Frayer is again incorrect about the California market – in this instance, the extent of data in the possession of the IOUs. While she implies that the playing field is not level in that IOUs know more data than suppliers, this claim is not true. The IOUs are also in competition with each other and are prohibited

[6] D.02-10-062 Conclusion of Law 11: "In order to exercise effective regulatory oversight of the behavior discussed above, all parties to a procurement contract must agree to give the Commission and its staff reasonable access to information within seven working days, unless otherwise practical, regarding compliance with these standards."

from sharing confidential information. As stated above, the sellers guard their commercially sensitive data, so that the IOUs do not have any better insight into supplier positions than suppliers have into IOU positions.

Lack of Proof for Claims that Data Release will not Harm Ratepayers

While CEC claims that only the IOUs have a burden of proof in the dispute over protecting ratepayers from the harm caused by releasing commercially sensitive data, the three CEC witnesses' direct testimony is remarkable in one common characteristic – they are all lacking in anything that could be called "proof" to support their assertions of the benefits of the release of data at issue in this proceeding. The CEC witnesses certainly do not come close to meeting the standard to which the IOUs are apparently being held.

As just one example, Witness Frayer states at p. 17: "Thus, risk aversion appears to be a good characterization of market participants in these procurement processes, ***suggesting*** (emphasis added) that information dissemination which reduces uncertainty would have a beneficial repercussions for buyers and, thus, for ratepayers." In this single example, as with numerous other instances throughout the CEC witnesses' direct testimony, we are left with a number of assertions claiming to support their case for the release of data while we are offered no evidence that their assertions are true or correct. If this exercise is simply a difference of opinion between the experts of the CEC and the experts of the IOUs, then surely the ratepayers should receive the benefit of the doubt. As such, should we not therefore protect this data from the ratepayers' market competitors so that one errs on the side of caution, particularly when there is no conclusive proof offered by those who argue for release of more data that indeed customers would be better off.

Comments on the Direct Testimony of the Individual CEC Witnesses

In this section, I offer the following comments on certain aspects of the individual testimony of each CEC witness.

Frayer

Witness Frayer sends mixed messages with regard to "private information." At p. 11, for example, she asserts that "a key feature of the current market" is "(t)he extent of publicly available, detailed information on demand and supply." While this statement certainly causes one to question the need for release of the data that is at issue here, she seems to be saying (to borrow from Southern California Edison's analogy) that we are playing poker and everyone's cards are "face-up." SDG&E does not believe that the sellers' cards are "face-up," and indeed they generally take steps to ensure that their cards remain "face down." Further, if Witness Frayer is correct that only the ratepayers are allowed to keep their cards "face down," then would ratepayers fare better or worse than the rest of the table?

At p. 15, Witness Frayer also seems to argue that ratepayers actually benefit from restricted data release: "having private information allows a company to make excess profits." Although the point of her claim is not entirely clear, this statement implies that ratepayers will benefit from maintaining confidential (private) information because they will fare better in lower cost procurement rates (the commodity being a "pass through" cost to the utility). Conversely, her argument would also suggest that ratepayers are harmed by public release of sensitive commercial data.

Jaske

At p. 5, Witness Jaske cites various examples of data that is made publicly

available by other utilities in the WECC and then goes on to state that, "in some instances [those] utilities disclose much more detail than what the Executive Director proposes to disclose." Witness Jaske therefore simultaneously holds up as an example the data released by other utilities, while at the same time pointing out that these utilities frequently go further with data release than the Executive Director feels is prudent. If these utilities would release data that the CEC feels should remain confidential, then why use them as standard for all other data? Perhaps they do not understand the confidentiality issue in the same way as California IOUs because they are more insulated from competition in their service territories. It is certainly a fact that retail competition is not practiced universally throughout the WECC. And it is also true that many of the other utilities, who were never forced to divest their generation, rely less on the wholesale market than California IOUs. In any event, before Witness Jaske's assertions in this regard could be relied upon here, there would need to be evidence that these markets are comparable, and that showing was not made by the CEC here.

At p. 6, Witness Jaske cites three examples of how individual public data can be used to "reverse engineer" other data that is deemed by the IOUs as confidential. This discussion by Witness Jaske makes the case for why tighter control of even some currently public pieces of data is necessary to protect ratepayers. Every individual piece of data is but one piece of a larger puzzle that is the commercial position of utility ratepayers. Witness Jaske's examples provide an excellent basis for limiting - - not expanding - - data release. As he points out, even seemingly innocuous data can be used to obtain more sensitive data. Indeed, it is difficult in this respect to always know what data can really be considered innocuous.

At p. 12, Witness Jaske contends that even the release of a utility's residual net short (RNS) data (which would disclose the extent and timing of ratepayer need and is therefore some of the most commercially sensitive ratepayer data) may be acceptable because the IOUs will procure through "a whole variety of solicitations." Therefore, the RNS knowledge "does little to affect how generators will bid on any one." This unsupported conclusion ignores the fact that for a utility the size of SDG&E, it is unlikely to have many solicitations. Therefore, the correct conclusion may be that release of RNS will be detrimental to ratepayers of SDG&E.

Kennedy

At p. 5, Witness Kennedy states broadly that the "specifics of DWR contracts that provide a large portion of each utilities supply through 2010 are public." Witness Kennedy is wrong. There are many important, commercially sensitive aspects of the DWR contracts that are not public, such as the price of gas delivered to any individual IOU tolling contract and the level of generation at the dispatchable DWR contract units.

Furthermore, at p. 7 Witness Kennedy basically refutes his entire argument supporting data release by conceding that "some market manipulation is possible." But, (in his opinion) the "utilities are much less vulnerable now." Witness Kennedy cannot have it both ways: either release of IOU data is beneficial to the market and therefore beneficial to ratepayers or market manipulation (among other problems) is possible and public release of sensitive commercial information should be avoided to protect ratepayers. Like the other CEC witnesses, Witness Kennedy does not offer any quantitative or qualitative "proof" for his assertions, and it would be interesting to know if he has calculated how much ratepayers still stand to lose, even given their "less

vulnerable" current state. In addition, how much harm to the market is acceptable for ratepayers if the data release has offsetting benefits for sellers?

Conclusion

As the CEC deliberates regarding the confidentiality of data in this and future proceedings it should be guided by the following considerations:

(1) The CEC should coordinate closely with the CPUC, and the manner in which both agencies delineate data as confidential should be consistent. In the spirit of this cooperative approach, the CEC should take notice of the current CPUC Order Instituting Rulemaking on confidentiality issues (R.05-06-040). The CEC should take *no actions here* with regard to confidentiality that would presuppose the outcome of this OIR or that are inconsistent with CPUC determinations to date regarding the confidentiality of procurement data.

(2) In making decisions on confidentiality issues, the CEC should, where any doubt remains as to the advisability of releasing data, err on the side of caution and give to ratepayers the benefit of the doubt that will ensure protection of their interests. SDG&E's efforts devoted to the outcome of this debate are for the sole purpose of benefiting and protecting ratepayers.

This concludes my rebuttal testimony.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of **SAN DIEGO GAS & ELECTRIC COMPANY'S REBUTTAL TESTIMONY OF MIKE McCLENAHAN** on the parties on the service list in Docket No. 04-IEP-ID by electronic mail.

Dated at San Diego, California, this 12th day of August, 2005.

Darleen Evans